

Message Text

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TO AMEMBASSY PRETORIA PRIORITY

S E C R E T STATE 007053

EXDIS

FOL RPT 77 STATE 310459 SENT ACTION TEL AVIV & USUN NEW YORK
DTD 30 DEC 77

QUOTE: S E C R E T STATE 310459

EXDIS

E.O. 11652:GDS

TAGS: PCAT UNSC, IS, UN

SUBJECT: ISRAELI COMPLIANCE WITH SC ARMS EMBARGO ON
SOUTH AFRICA

1. AT OUR REQUEST, ISRAELI EMBASSY MINISTER COUNSELOR
BAR-ON MET WITH IO ACTING ASSISTANT SECRETARY HELMAN
DECEMBER 29 TO DISCUSS ISRAELI COMPLIANCE WITH THE
SECURITY COUNCIL ARMS EMBARGO ON SOUTH AFRICA. LEGAL
ADVISER HANSELL PARTICIPATED, ALONG WITH DEPUTY LEGAL
ADVISER MICHEL.

SECRET

SECRET

PAGE 02 STATE 007053

2. HELMAN NOTED THAT WE HAD ON A NUMBER OF OCCASIONS
EXPLAINED TO THE ISRAELI FOREIGN MINISTRY OUR VIEW OF
THE SIGNIFICANCE AND INTERPRETATION OF SC RESOLUTION
418. THE UNITED STATES BELIEVES THIS RESOLUTION PROHIBITS
ANY FURTHER DELIVERIES OF ARMS OR RELATED MATERIAL TO
SOUTH AFRICA, EVEN UNDER EXISTING CONTRACTS. THIS

INTERPRETATION IS SHARED BY THE UNITED NATIONS LEGAL COUNSEL AND BY ALL MEMBERS OF THE SECURITY COUNCIL. ACCORDINGLY WE ARE CONCERNED AT INDICATIONS THAT ISRAEL DOES NOT SHARE THIS INTERPRETATION.

3. IN HIS REPLY, BAR-ON SPOKE FROM A DOCUMENT HE INDICATED HAD BEEN PREPARED AT DAYAN'S REQUEST BY

THE FOREIGN MINISTRY'S LEGAL DIVISION. (HE DECLINED TO LEAVE A COPY.) BAR-ON SAID ISRAEL CERTAINLY SHARES OUR INTERPRETATION AS REGARDS NEW ARMS AGREEMENTS, BUT BELIEVES THAT THE RESOLUTION IS NOT MEANT TO COVER EXISTING ARRANGEMENTS. IN SUPPORT OF THIS POSITION, HE CITED A NUMBER OF POINTS:

-- PARAGRAPH TWO OF THE RESOLUTION DOES NOT STAND ALONE, BUT SHOULD BE READ TOGETHER WITH PARAGRAPH THREE, WHICH ONLY CALLS FOR THE REVIEW OF EXISTING ARRANGEMENTS. IN THIS REGARD, ISRAEL READS THE WORDS "PROVISION...INCLUDING THE SALE OR TRANSFER" IN PARAGRAPH TWO AS NOT INCLUDING DELIVERY OF GOODS ALREADY "SOLD" AND DOES NOT READ THE CLAUSE "RELATING TO THE MANUFACTURE AND MAINTENANCE OF ARMS..." IN PARAGRAPH THREE AS MODIFYING "ALL EXISTING CONTRACTUAL ARRANGEMENTS".

SECRET

SECRET

PAGE 03 STATE 007053

-- RESOLUTION 418 MUST BE READ IN LIGHT OF EARLIER DRAFTS WHICH WERE REJECTED BY THE COUNCIL AND WHICH CONTAINED MORE SPECIFIC PROVISIONS IN THIS REGARD.

-- ONE MUST ALSO REFER BACK TO EARLIER PRECEDENTS. THE EMBARGO IMPOSED BY THE LEAGUE OF NATIONS ON ITALY IN 1935 WAS VERY EXPLICIT ON THE SUBJECT OF EXISTING CONTRACTS. EVEN IN THE RHODESIAN CASE, THE SECURITY COUNCIL HAD EMPLOYED MORE EXPLICIT LANGUAGE REGARDING EXISTING CONTRACTS THAN DID RESOLUTION 418. ISRAEL BELIEVES THAT, IF IT WAS THE INTENTION OF THE FRAMERS OF RESOLUTION 418 TO INCLUDE EXISTING CONTRACTS, THEY WOULD HAVE FOLLOWED THESE PRECEDENTS.

-- A CARDINAL PRINCIPLE OF INTERNATIONAL LEGAL INTERPRETATION IS THAT ANY INTERNATIONAL CONSTRAINT WHICH INFRINGES ON THE SOVEREIGNTY OF COUNTRIES, ESPECIALLY AS APPLYING TO FREEDOM OF TRADE, SHOULD BE INTERPRETED RESTRICTIVELY. THE QUESTION OF SANCTIONS OR EMBARGOES IS A PARTICULARLY SERIOUS MATTER. THIS GENERAL POINT OF VIEW SUPPORTS ISRAEL'S SPECIFIC ANALYSIS OF THE RESOLUTION.

4. IN REPLY, MICHEL NOTED THAT USG READ THE REFERENCE TO "EXISTING CONTRACTUAL ARRANGEMENTS" IN PARAGRAPH THREE AS LIMITED TO CONTRACTS RELATING TO THE "MANUFACTURE AND MAINTENANCE OF ARMS" (IN SOUTH AFRICA). WE READ THIS AS MEANING THAT MANUFACTURING OR MAINTENANCE ARRANGEMENTS WHICH MAY HAVE BEEN IN EXISTENCE AT THE TIME OF THE ADOPTION OF THE RESOLUTION

COULD BE CONTINUED IN FORCE, BUT ONLY IF THIS COULD BE DONE WITHOUT THE FURTHER DELIVERY OF MATERIAL OR EQUIPMENT WHICH WOULD CONTRAVENE PARAGRAPH TWO. HE EMPHASIZED THE IMPORTANCE OF STATE PRACTICE IN IMPLEMENTING THE RESOLUTION AS A GUIDE TO ITS

SECRET

SECRET

PAGE 04 STATE 007053

CORRECT INTERPRETATION.

5. HELMAN ADDED ON THIS POINT THAT ALL SECURITY COUNCIL MEMBERS SHARED OUR INTERPRETATION AND FROM THIS IT WAS REASONABLE TO CONCLUDE THAT THEY HAD THIS IN MIND IN DRAFTING THE RESOLUTION. HE POINTED SPECIFICALLY TO FRANCE WHICH WAS IN A SITUATION SIMILAR TO THAT OF ISRAEL AND HAD DECIDED NOT TO DELIVER EQUIPMENT UNDER EXISTING CONTRACTS. WE HAD SURVEYED THOSE COUNTRIES WHICH HAD PREVIOUSLY SUPPLIED ARMS TO SOUTH AFRICA AND, WITH THE EXCEPTION OF ISRAEL, THEY ALL SHARED THIS INTERPRETATION.

6. HELMAN SAID THAT THE POLITICAL CONSEQUENCES SHOULD ALSO BE CONSIDERED. IF IT SHOULD BECOME KNOWN THAT ISRAEL HAD DELIVERED ARMS TO SOUTH AFRICA SUBSEQUENT TO ADOPTION OF THIS RESOLUTION, WE COULD ANTICIPATE THAT THE AFRICANS, SUPPORTED BY THE SOVIET UNION, WOULD SEEK ACTION BY THE SECURITY COUNCIL. THIS COULD WELL BE UNDER CIRCUMSTANCES IN WHICH ISRAEL'S FRIENDS WOULD BE IN DISAGREEMENT WITH ISRAEL REGARDING THE APPLICATION OF THE ARMS EMBARGO TO EXISTING CONTRACTS. HELMAN ALSO GAVE BAR-ON A "NON-PAPER" SUMMARIZING OUR VIEWS AS FOLLOWS:

"IF THE GOVERNMENT OF ISRAEL WERE TO MAKE FURTHER DELIVERIES OF ARMS OR RELATED MATERIAL UNDER EXISTING CONTRACTS WITH SOUTH AFRICA, ISRAEL WOULD BE IN VIOLATION OF SECURITY COUNCIL RESOLUTION 418. SUCH ACTION WOULD CONSTITUTE A VIOLATION OF ISRAEL'S LEGAL OBLIGATION TO OBSERVE THE MANDATORY DECISIONS OF THE SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE UN CHARTER.

SECRET

SECRET

PAGE 05 STATE 007053

"THE SECURITY COUNCIL ARMS EMBARGO AGAINST SOUTH AFRICA UNAMBIGUOUSLY APPLIES TO DELIVERIES UNDER PREVIOUS CONTRACTS AS WELL AS TO NEW SALES. THIS VIEW IS SHARED BY THE UNITED STATES, BY THE UNITED NATIONS LEGAL COUNSEL, AND BY ALL MEMBERS OF THE SECURITY COUNCIL. THAT EXISTING CONTRACTS ARE COVERED BY SECURITY COUNCIL RESOLUTION 418 WAS UNDERSTOOD BY ALL SECURITY COUNCIL MEMBERS WHEN THE RESOLUTION WAS ADOPTED.

"A CAREFUL REVIEW OF THE EXPRESSED INTENTIONS AND ACTIONS OF OTHER GOVERNMENTS WHO HAVE IN THE PAST SUPPLIED ARMS AND MILITARY EQUIPMENT TO SOUTH AFRICA REVEALS THAT NO GOVERNMENT, OTHER THAN THAT OF ISRAEL, IS CONSIDERING THE FURTHER SUPPLY OF ARMS TO SOUTH AFRICA. THIS INCLUDES GOVERNMENTS SUCH AS FRANCE WHICH HAD IMPORTANT ARMS CONTRACTS WITH SOUTH AFRICA AT THE TIME THE EMBARGO WAS ADOPTED. IT IS WORTH NOTING THAT OF THE REPLIES TO THE SECRETARY GENERAL'S LETTER REGARDING SECURITY COUNCIL RESOLUTION 418, ONLY THOSE OF ISRAEL AND BOLIVIA, WHICH SAID IT WAS STUDYING THE MATTER, WERE NOT CATEGORICAL ASSURANCES OF COMPLIANCE.

"THE AFRICAN REACTION AT THE UNITED NATIONS TO ANY EVIDENCE THAT ISRAEL IS NOT IN STRICT COMPLIANCE WITH THE ARMS EMBARGO WOULD BE SERIOUS. IT COULD WELL INVOLVE PROPOSALS FOR ACTION BY THE SECURITY COUNCIL UNDER CIRCUMSTANCES WHERE ISRAEL'S FRIENDS WOULD BE IN TOTAL DISAGREEMENT WITH ISRAEL ON A MOST SIGNIFICANT POINT -- THAT THE ARMS EMBARGO APPLIES TO EXISTING CONTRACTS."

7. HANSELL OFFERED TO EXAMINE FURTHER THE LEGAL POINTS MADE BY BAR-ON. FYI: L IS PREPARING A LEGAL
SECRET

SECRET

PAGE 06 STATE 007053

MEMORANDUM ON THIS SUBJECT, WHICH WILL BE POUCHED TO EMBASSY AND MISSION WHEN IT IS AVAILABLE. END FYI.

8. FOR TEL AVIV: YOU MAY WISH TO DRAW ON ABOVE IN DISCUSSIONS WITH ISRAELIS ON THIS SUBJECT.

9. FOR USUN: YOU MAY WANT TO FIND AN EARLY

OCCASION TO REVIEW THIS ISSUE WITH HERZOG AND ELIAV.
WE ASSUME THEY WILL BE ESPECIALLY SENSITIVE TO THE
PRESSURES ISRAEL WOULD FACE IN THE SECURITY COUNCIL
IN THE EVENT THAT ISRAEL IS DISCOVERED TO BE VIOLATING
SANCTIONS ON ARMS SALES TO SOUTH AFRICA AND
PARTICULARLY IF ISRAEL IS THE ONLY SUCH VIOLATER.

MISSION MIGHT ENLARGE ON THE POINT BY NOTING THAT
THE ISRAELI MISSION IS BEGINNING TO SEEK SOME OF THE
BENEFITS FLOWING FROM FAVORABLE DEVELOPMENTS IN THE
MIDDLE EAST PEACE PROSPECTS. ISRAEL'S INTEREST IN
JOINING THE OUTER SPACE COMMITTEE, FOR EXAMPLE,
PRESAGES AN ISRAELI DESIRE TO PARTICIPATE NORMALLY
IN THE UN'S ACTIVITIES. WE SUPPORT THIS STRONGLY
AND BELIEVE IT IS IN ISRAEL'S LONGER-TERM INTEREST
WHICH, HOWEVER, COULD BE DAMAGED BY ISRAELI ACTIONS

WHICH WILL CERTAINLY BE UNIVERSALLY INTERPRETED AS
FLAUNTING INTERNATIONALLY BINDING CHAPTER VII
SANCTIONS AGAINST SOUTH AFRICA. MISSION MIGHT FURTHER
ADD, IN DISCUSSING MATTER WITH ISRAELI COUNTERPARTS,
THAT ISRAEL'S PROSPECTS FOR MORE NORMAL PARTICIPATION
IN UN ACTIVITIES ALSO CAN BE SIGNIFICANTLY IMPROVED
IF ISRAELI COMMENTS ON UN ACTIVITIES ARE TONED DOWN
SOMEWHAT. WHILE IN MANY RESPECTS JUSTIFIED, BECAUSE
OF TOTALLY UNFAIR TREATMENT THAT ISRAEL HAS RECEIVED
SECRET

SECRET

PAGE 07 STATE 007053

AT THE HANDS PARTICULARLY OF THE GENERAL ASSEMBLY,
SUCH PUBLIC AND PRIVATE COMMENTS BY PRINCIPAL ISRAELI
MISSION OFFICERS, INCLUDING AMBASSADOR HERZOG, DO
SERVE TO ANTAGONIZE OTHER UN PERMREPS. WE DO NOT
COUNSEL ISRAELIS TO CUT BACK ON THEIR CRITICISM
BUT TO CONSIDER CAREFULLY ITS TONE AND PURPOSE.

CHRISTOPHER UNQUOTE VANCE

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